IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8982 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUMARBHAI NIHALCHAND MANCHA RAMANI THROUGH HIS BROTHER CHANDRESHNIHALCHAND MANCHA RAMANI

Versus

COMMISSIONER OF POLICE, AHMEDABAD CITY

Appearance:

MR NIRZAR S DESAI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City, Ahmedabad passed an order on October 14, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenue - Kumarbhai Nihalchand Mancha

Ramani, under the provisions of the PASA Act.

#. Detaining authority after considering an offence registered against the detenue with Amraiwadi Police Station CR No. II 3275/99 under sections 345, 347 and 349 of Suppression of Immoral Traffic in Women and Girls Act, 1956. The authority also considered the statements of two anonymous witnesses and came to conclusion that the detenue is an "immoral traffic offender" as defined under section 2 (g) of the PASA Act. The detaining authority recorded a satisfaction that the incidents narrated by the witnesses and the fear expressed by them are correct and genuine and therefore, their identity is required to be not disclosed in exercise of powers under section 9(2) of the PASA Act. The authority recorded that the activities of the detenue are hazardous to public health and detrimental to public order, and therefore, the detenue is required to be immediately prevented from pursuing his activities. Resorting to less drastic remedies was found to be not efficacious by the detaining authority and therefore, the detenue came to be detained under the provisions of the PASA Act.

#. The detenue challenges the order of detention on various grounds. However, Mr. N.S. Desai, learned advocate appearing for the detenue has restricted his arguments to two aspects. The first being that only one offence is registered against the detenue and if the definition of "immoral traffic offender" is seen, it requires habitual involvement of the detenue for bringing him under the sweep of that definition. The second fold of argument is that the detaining authority has relied on two statements of anonymous witnesses. The statements were recorded by the detaining authority on 13.10.99. Both the statements were verified on 14.10.99 and the order was passed on that very day. According to Mr. Desai, the detaining authority could not have properly undertaken the exercise required to be undertaken before exercising powers under section 9(2) of the PASA Act. Improper exercise of powers under section 9(2) of the PASA Act, therefore, has affected the right of the detenue of making an effective representation as contemplated under Art. 22(5) of the Constitution of India. Mr. Desai, therefore, urged that the petition may be allowed and the order impugned herein, may be quashed and set aside.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. Considering the rival side contentions, it appears

that the detenue is detained as "immoral traffic offender". Under section 2(g) of the PASA Act, the definition of "immoral traffic offender" is as under.

"2(g): "Immoral traffic offender" means a person who habitually continues of abets the commission of any offence under the Suppression of Immoral Traffic in Women & Girls Act, 1956."

By virtue of this definition, a person can be brought under the sweep of this definition if he habitually continues or abets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956. It is therefore, required to be seen whether in the instant case, the detenue has been properly labelled as "immoral traffic offender".

#. In this regard, it may be noted that the detaining authority has considered one offence registered against the detenue and statements of two anonymous witnesses. This would indicate the plurality of involvement of detenue in such offence.

#. However, it may be noted that the statements of the two witnesses have been verified by the detaining authority on October 14, 1999 and on the same day, the order of detention is passed. The detaining authority has not filed any affidavit-in-reply. It is expected of the detaining authority to ascertain the correctness and genuineness of the statements and the fear expressed by the witnesses qua the detenue so also to weigh the right of the detenue to make an effective representation on one hand and in public interest on the other, while exercising powers under section 9(2) of the PASA Act. For this purpose, the authority has to consider the antecedents of the detenue, his character, his background, his temperament etc. (1981 22 GLR 11 1186 Bai Amina w/o Ibrahim Abdul Rahim Alla v. State of Gujarat). The authority is also expected to make contemporaneous record in this regard as suggested in the said judgment. It is worthwhile to note that the detaining authority has not filed any affidavit-in-reply nor there is any contemporaneous material to indicate consideration of such aspects by the detaining authority while passing the order of detention. On the contrary, the entire exercise of verification of the statements and preparation and passing of order is undertaken on October 14, 1999 i.e. in one day. It is not known as to when the witnesses were called, statements verified, when was the order drafted and signed. In fact, the authority had no sufficient time to undertake this detailed exercise.

The exercise of powers under section 9(2) of the PASA Act therefore, cannot be considered as proper. This would affect the right of the detenue of making an effective representation. (Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659).

#. The resultant effect is that the detaining authority has improperly exercised the powers under section 9(2) of the PASA Act and has based its satisfaction on those statements in respect of which the right of the detenue of making an effective representation is infringed and therefore, cannot be accepted, in law, as ground to form a subjective satisfaction for detaining a person under the PASA Act.

#. This would, therefore, now leave the order of detention only on one ground namely the offence registered against the detenue. There is only one offence registered against the detenue and therefore, the requirement of plurality of commission or abetment of offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 as required under section 2(g) of the PASA Act cannot be said to have been satisfied.

##. The order of detention therefore, based on a subjective satisfaction cannot be upheld and the same therefore, deserves to be quashed and set aside.

##. The petition is allowed. The impugned order of detention dated October 14, 1999 is hereby quashed and set aside. The detenue - Kumarbhai Nihalchand Mancha Ramani, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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